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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,681	01/15/2004	David F. Simon	SMD-104	4954

7590 12/21/2004
John R. Benefiel
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EXAMINER

WOOD, KIMBERLY T

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 12/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/758,681

Applicant(s)

SIMON

Examiner

Kimberly T. Wood

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 12-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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This is an office action for serial number 10/758,681, entitled Adjustable Book Holder Assembly, filed January 15, 2004.

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I drawn to figures 1-3, 3A, 4A, 4B, 5, and 6

Species II drawn to figure 7.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-5, 7, 9, 12-14 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with John Benefiel on September 23, 2004 a provisional election was made with traverse to prosecute the invention of Species I, claims 1-9 and 12-14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10 and 11 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 and 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The applicant has indicated within claim 1 that there are two different pivot fittings one including a swivel element and another being part of the swing arm. The applicant then further within the claim refers to a "said pivot fitting" in line 15, the examiner can not determine to which pivot fitting the applicant is referring to since the limitation does not provide adequate language to distinguish to which pivot fitting the applicant is detailing.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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Claim 14 rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a upright assembly having an upper and lower member, does not reasonably provide enablement for the upright assembly having an upper member, a lower member and an additional lower tubular member. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims.

The claims have been rejected under 35 U.S.C. 112 for the above reasons. Please note that the Examiner may not have pointed out each and every example of indefiniteness. The applicant is required to review all the claim language to make sure the claimed invention is clear and definite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 7, 9, 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Rucinski WO99/09859. Rucinski discloses

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a base (12), a upright assembly including a upper member (44) having a portion telescoped into lower member (22), a horizontal segment/reversely curved (58), a pivot fitting (108), a swivel element (110), a swing arm (figure 6) having a pivot fitting (86 or 58) including a swivel joint/socket (112 or 112A), a book support including a plate member (88), a pivot connection (in regards to claim 2, 132), a tilt pivot socket (118), and clamp with respective knobs (76).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 7, 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rucinski WO99/09859 in view of Carr 2,104,072. Rucinski discloses all of the limitations of the claimed invention except for the pivot connection includes an adjustable friction engagement. Carr teaches that it is known to have an arm (21) having a pivot connection including an

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adjustable friction engagement (38 and 39). It would have been obvious to one having ordinary skill in the art to have modified Rucinski to have included the arm with a pivot connection as taught by Carr for the purpose of allowing the book support to extend and rotate relative to the upright assembly in unlimited orientations for a broad spectrum of positions.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rucinski WO99/09859 in view of Carr 2,104,072 in view of Blumenstock 2,485,135. Rucinski in view of Carr discloses all of the limitations of the claimed invention except for disc, spring, and headed pin. Blumenstock teaches that it is known to have a rotatable coupling comprising a disc and plate (58 and 56), a friction disc (56), a spring (74), and a pin (70). It would have been obvious to one having ordinary skill in the art to have modified Rucinski in view of Carr to have included the disc, spring and pin as taught by Blumenstock for the purpose of providing a better means of rotation.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rucinski WO99/09859 in view of Carr 2,104,072 in view of Blumenstock 2,485,135 in view of Walrath et al. (Walrath). Rucinski in view of Carr discloses all of the limitations of the claimed invention except friction disc. It would have been obvious to one having ordinary skill in the art

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to have modified Rucinski in view of Carr in view of Blumenstock to have included the friction disk as taught by Walrath for the purpose of providing a better means of controlling the rotation of the book support relative to the upright member.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rucinski WO99/09859 in view of Carr 2,104,072 in view of Bradley 3,586,852. Rucinski in view of Carr disclose all of the limitation of the claimed invention except for the clamp having respective knobs. Bradley discloses a clamp having respective knobs. It would have been obvious to one having ordinary skill in the art to have modified Rucinski in view of Carr to have included the clamp as taught by Bradley for the purpose of preventing swiveling of the upper and lower members.

Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rucinski WO99/09859 in view of Carr 2,104,072 in view of Keats 3,119,588. Rucinski in view of Carr disclose all of the limitation of the claimed invention except for a cast iron base having ribs and a cover. Keats teaches that it is known to have a base having ribs and a cover (10). It would have been obvious to one having ordinary skill in the art to have made the base having ribs and a cover for the purpose of providing a more stable and rigid base member. It would have

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been obvious to one having ordinary skill in the art at the time the invention was made to have the base being of case iron, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice and would prevent the base from having to weighted down therefore preventing accidental removal from position. *In re Leshin*, 125 USPQ 416.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

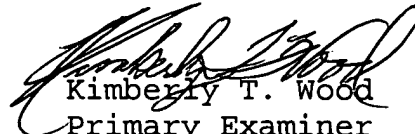
The prior art discloses conventional holder assemblies.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly T. Wood whose telephone number is 703-308-0539. The examiner can normally be reached on Monday-Thursday 7:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kimberly T. Wood
Primary Examiner
Art Unit 3632

December 12, 2004